only would be affected. While their Lordships agree that the mere fact that a person is likely to be better off financially if a case is decided one way rather than another is not a sufficient ground to entitle him to be added as a party, they do not find the dichotomy between "legal" and "commercial" interests helpful. A better way of expressing the test is: will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in the action?

In the present case as already pointed out if the appeal is withdrawn or fails the contractor will have no right to enter upon and win the minerals on the disputed parcels. If it succeeds he will have such a right. The interests of the company, the sub-lessees and the sub-sub-lessee in the disputed parcels are the subject matter of the action, and counsel for the company concedes that if the sub-sub-lessee had agreed with the contractor to grant him a sub-sub-lease of the disputed parcels paying tribute at 14½% of the proceeds of sale, instead of agreeing to grant him a licence to enter and win the minerals for her for in return for 85½% of the proceeds of sale, the court would have jurisdiction to add the contractor as a party because the contractor would then have a "legal" interest in the subject matter of the action.

In their Lordships' view the jurisdiction of the Federal Court of Malaysia to add the contractor as a party to the appeal does not turn upon the technical distinction between a leasehold interest and a licence to enter and work the minerals. His interest, in their Lordships' view, is sufficiently direct to give the court jurisdiction to add him as a party.

That being so the matter was one for the discretion of the Federal Court. In other circumstances it might have been argued that the interests of the contractor were sufficiently safeguarded by substituting the sub-lessees for the sub-sub-lessee as appellants and that it was therefore unnecessary to add the contractor as a second appellant. But the Federal Court were entitled to take the view that this would not be a sufficient safeguard. The company had already bought off one appellant. They might try the same tactics with the sub-lessees.

Their Lordships will report to the Head of Malaysia their opinion that this appeal ought to be dismissed and that the appellant ought to pay to the first and second respondents their costs of this appeal.

Appeal dismissed.

Solicitors: *Parker Garrett & Co.; Graham Page & Co.*

SIM LIM INVESTMENTS LTD. v. ATTORNEY-GENERAL, SINGAPORE

[P.C. (Lord Hodson, Lord Diplock & Sir Garfield Barwick) July 28, 1969]

[Privy Council Appeal No. 34 of 1968]

Income Tax — Statutory income — Dividend — Subsidiary company declaring dividend — Whether parent company entitled to treat dividend declared and paid in subsequent year as having been derived and paid in subsequent year — Accounting practice — Income Tax Ordinance (Cap. 166) ss. 10, 35(7A), 37, 44 sub-ss. (1)—(5).

This was an appeal from the decision of the Federal Court reported in [1969] 1 M.L.J. 5.

The only question in this appeal was whether a dividend of $1,192,500 declared and paid on March 6, 1965 by Sim Lim Co. Ltd., a wholly-owned subsidiary of the appellant company, was to be included in the statutory income of the appellant company for the year of assessment ended December 31, 1965.

Held, dismissing the appeal: (1) as was held by each of the courts below, the dividend of $1,192,500 declared and paid to the appellant company on March 6, 1965 formed part of its statutory income for the year of assessment ended December 31, 1966, and did not form part of its statutory income for the year of assessment ended December 31, 1965 in which its own dividend of $811,162.50 (from which tax was deducted) was paid;

(2) the words of section 35 (7A) are too plain to permit any other construction than those accepted by the High Court of Singapore and the Federal Court of Malaysia. Income from a dividend does not accrue until it has been declared and at least become payable.

PRIVY COUNCIL appeal heard on June 25, 1969.

H.H. Monroe, Q.C. and *G. Starforth Hill* for the appellants.

Michael Nolan, Q.C., *Stewart Bates* and *Sat Pal Khattar* (State Counsel) for the respondent.

Lord Diplock (delivering the judgment of the Board): The only question in this appeal is whether a dividend of $1,192,500 declared and paid on 6th March 1965 by Sim Lim Co. Ltd., a wholly-owned subsidiary of the appellant company, is to be included in the statutory income of the appellant company for the year of assessment ended 31st December 1965.

The appellant company itself declared and paid on 17th August 1965 a dividend of $811,162.50 from which it duly deducted tax at the rate of 40% under section 44(1) of the Income Tax Ordinance. Subsections (2) to (5) of section 44 provide in effect that if the amount so deducted exceeds the amount of tax payable by the appellant company in respect of the year of assessment in which the deduction was made (together with any balance of tax from pre-

vious years available as a set-off under the provisions of subsection (5)) the amount of the excess is recoverable from the appellant company as a debt to the Government. It is unnecessary for their Lordships to refer to these provisions in detail, for it is common ground that the excess so recoverable amounts to $302,324.60 unless the dividend of $1,192,500 which the appellant company received from its wholly-owned subsidiary on 6th March 1965 did form part of its statutory income for the year of assessment (ended 31st December 1965) in which it paid its own dividend to its own shareholders and deducted tax therefrom. The High Court of Singapore and, on appeal the Federal Court of Malaysia, held that it did not. Both courts gave substantially the same reasons for their judgments. Their Lordships so fully agree with them that it is unnecessary to do more than to repeat them in summary form in dismissing this further appeal.

Under section 10 of the Income Tax Ordinance income tax is payable upon the income of any person accruing in or derived from Singapore, in respect of (*inter alia*): "(a) gains or profits from any trade, business . . . ." and "(d) dividends . . . ". The amount of the income of a company resident in Singapore which is assessable to tax for any year of assessment is determined by ascertaining what is its "statutory income" for that year of assessment under section 35 and deducting therefrom any deductions allowed by section 37. No question as to deductions arises in the present appeal, which turns solely upon the true construction of section 35 and in particular subsection (7A).

The general basis for computing "statutory income" for any year of assessment laid down in subsection (1) of section 35, is that it is the full amount of the taxpayer's income *for the year preceding the year of assessment* from each source of income possessed by him at any time during the year of assessment. Subsection (7A) which deals specifically with dividends is in the following terms:—

> "(7A) The statutory income of any person for any year of assessment in respect of dividends shall be the full amount of the income therefrom for the year preceding the year of assessment notwithstanding that the source of such income is not possessed by him during the year of assessment."

It therefore follows, in their Lordships' view, that, as was held by each of the courts below, the dividend of $1,192,500 declared and paid to the appellant company on 6th March 1965 formed part of its statutory income for the year of assessment ended 31st December 1966, and did not form part of its statutory income for the year of assessment ended 31st December 1965 in which its own dividend of $811,162.50 (from which tax was deducted) was paid.

The argument to the contrary was based upon the way in which the dividend of $1,192,500 was dealt with in the accounts of the appellant company and its subsidiary. In its trading and profit and loss account for the year ended 31st December 1964 the subsidiary company showed a net profit transferred to appropriation account of $552,533.05. In its appropriation account, which included a substantial balance from the previous year and dividends received from other companies it appropriated to "Provision for Dividend $1,192,500 less income tax at 40% $477,000", giving a net appropriation of $715,500. This figure appears in the balance sheet of the subsidiary company at 31st December 1964 as a liability under the rubric "provision for dividend". In the appellant company's own profit and loss account for the period ended 31st December 1964, the figure of $1,192,500 appears on the income side under the rubric "dividend from subsidiary company (gross)".

Both parties were prepared to accept that this method of dealing with the proposed dividend of $1,192,500 (gross) in the accounts of both companies for the year ended 31st December 1964 was in accordance with good accounting practice. The submission for the appellant company was that since in accordance with that practice the amount of the proposed dividend of the subsidiary company was properly included as a credit item in the profit and loss account of the appellant company for the year ended 31st December 1964 it constituted income from dividends for the year of assessment 1965 notwithstanding that no dividend was declared or paid until the year 1965.

Whatever force that argument might have if the appellant company were liable to income tax upon the profits of a trade or business only, it has none in relation to income accruing in respect of dividends. In their Lordships' view the words of section 35 subsection (7A) are too plain to permit any other construction than that accepted by the High Court of Singapore and the Federal Court of Malaysia. Income from a dividend does not accrue until it has been declared and at least become payable.

The appeal is accordingly dismissed with costs.

Appeal dismissed.

Solicitors: *Coward, Chance & Co.; Charles Russell & Co.*